

Letter of Findings: 40-20110591P
Utility Receipts Tax
For the Year 2011

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ISSUE

I. Utility Receipts Tax – Underpayment Penalty.

Authority: IC § 6-2.3-6-1(a); IC § 6-2.3-6-1(f); IC § 6-8.1-10-2.1(b); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that the Department of Revenue should exercise its statutory authority to abate a ten-percent "underpayment" penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana taxpayer which pays the state's Utility Receipts Tax. Taxpayer failed to file a third quarter estimated tax payment and was assessed a ten-percent penalty. Taxpayer disagreed with the penalty and submitted a protest to that effect. This Letter of Findings was written based upon information supplied by Taxpayer and upon information contained within the protest file.

I. Utility Receipts Tax – Underpayment Penalty.

DISCUSSION

Taxpayer made first, second, and fourth quarterly estimated tax payments as required under IC § 6-2.3-6-1(a) which states:

Except as provided in subsections (c) through (e), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

Taxpayer's third quarterly payment was untimely and Taxpayer was assessed a ten-percent penalty pursuant to IC § 6-2.3-6-1(f) which states in part that, "The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d)."

The cross-referenced penalty provision states:

Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date. IC § 6-8.1-10-2.1(b)

Taxpayer asks that the Department exercise its discretion to abate the consequent penalty pursuant to IC § 6-8.1-10-2.1(d) as follows:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Based upon the particular facts and circumstances attendant upon this Taxpayer, the Department is prepared to agree that Taxpayer has established reasonable cause sufficient to warrant abating the ten-percent penalty.

FINDING

Taxpayer's protest is sustained.

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